

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

REBECCA HARPER, et al.,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, IN  
HIS OFFICIAL CAPACITY AS SENIOR  
CHAIRMAN OF THE HOUSE SELECT  
COMMITTEE ON REDISTRICTING, et al

Defendants.

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Case No: 5:19-cv-452

**RESPONSE TO NOTICE OF RELATED CASE**

Plaintiffs' Notice of Related Case [D.E. 7] filed on October 14, 2019, badly misconstrues the facts.

This past year a group of plaintiffs, including Common Cause and the North Carolina Democratic Party, challenged North Carolina's legislative districts in *Common Cause v. Lewis*, 18 cvs-014001 (Sup. Ct. Wake). The case was ultimately decided in North Carolina State Court, after the case was remanded, an order which remains on appeal.<sup>1</sup> Plaintiffs' Notice of Related Case, attempts to draw a parallel between these two cases when, in reality, these cases are not related, because they involve challenges to different redistricting plans. If they were "related," then this challenge could and would have been brought with the legislative case last year.

Recently, President Trump made a similar argument to Plaintiffs' for consolidation of cases regarding his tax returns in the District Court for the District of Columbia. *See Trump v. Comm.*

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<sup>1</sup> The Judgement remanding the case was final, and that case was closed. *See Common Cause v. Lewis*, No. 5:18-cv-00589. Therefore, Plaintiffs argument that designating this case as "related" would duplicate labor and expense fails, as the case Plaintiffs seek relation to is closed.

*On Ways & Means*, 2019 WL 3388537 (D.DC, July 25, 2019) There the court held that the cases were not related because the “cases involve different claims” where the first case involved federal claims regarding President Trump’s federal tax returns, and the other involved President Trump’s New York Tax returns. This is substantially similar to the difference between legislative and congressional redistricting plans. In refusing to grant the related-case designation, the Court noted that the party requesting the related-case designation “bears the burden of showing that the cases are related.” And that the burden “is heavy as random assignment of cases is essential to the public’s confidence in an impartial judiciary.” Plaintiffs’ cannot meet that burden here, and the Court should follow the Court’s reasoning in *Trump v. Comm. On Ways & Means* and likewise refuse to designate these cases as related.

Plaintiffs also argue that *Harper and Common Cause* are related because Legislative Defendants removed both cases under the same statute. Such an argument hardly merits a response as unrelated cases are removed to federal court every day under substantially similar facts and statutes. By Plaintiffs’ logic, every employment case removed by the same employer is related. Nevertheless, this removal petition is clearly distinct from the *Common Cause* removal. This removal petition involves the North Carolina congressional plan, and specifically Congressional District 1, based on evidence from the *Common Cause v. Rucho*, 1:16-cv-01026 (M.D.N.C.) case, and is therefore substantively different from the prior case involving North Carolina’s legislative districts. Recently, President Trump made a similar argument for consolidation of cases between

Plaintiffs’ also claim that the defendants are “identical” because defendants are “...the chairs of the North Carolina House and Senate standing committees on redistricting, and the speaker of the North Carolina House and the president pro tempore of the Senate, all sued in their official capacity.” This is untrue, as Plaintiffs did not name as defendants the Chairs of the North

Carolina House Standing Committee on Redistricting, choosing instead, to cherry pick one of the Chairs, rather than both.

Finally, under Local Rule 40.1(c), since the lead plaintiff Harper is from Wake County, this case should be assigned to the division that includes Wake County. There is no reason for the court to deviate from its normal rules so that Plaintiffs can find a judge they deem preferable.

Respectfully submitted, this the 15<sup>h</sup> day of October, 2019.

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## **CERTIFICATE OF SERVICE**

It is hereby certified that on this date the foregoing document was duly served upon all other parties to this matter by mailing a copy thereof, via US Mail addressed to:

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DATED this the 15<sup>th</sup> day of October, 2019.

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